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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1095

ABE LAVINE, individually and as Commissioner of the Department of Social Services of the State of New York,

Appellant,

v.

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

Appellees,

and

JOHN LASCARIS, individually and as Commissioner of the Department of Social Services of the County of Onondaga,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR APPELLANT LAVINE

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This brief is submitted on behalf of appellant Lavine in reply to the brief for appellee Stuck. Aside from directing the Court's attention to appellee's obvious misreading of the provisions of 42 U.S.C. § 602(a)(7) (Appellee's Brief, p. 12), and to avoid being merely argumentative, there is only one matter to which we wish to address ourselves.

The Legislative History of H.h 3153 (Appellee's Brief, p. 17) supports the position of appellants that it was not the intention of Congress to shift parental support responsibilities from parents to the State.

That the Congressional purpose and intent underpinning the provisions of 42 U.S.C. § 602(a) (11) (17) (18) (21) and (22) is as we have urged in our main brief (Appellants' Brief, pp. 16-32) further demonstrated by a reading of Senate Report No. 93-553 to accompany H. R. 3153 to which appellee refers at page 17 of her brief.

Senate Report No. 93-553 summarizes the Senate bill as follows:

> "The bill as passed by the House would make a number of minor, clerical, and conforming changes in the Social Security Act to correct errors and oversights in the Social Security Amendments of 1972. The Committee amendment incorporates a number of substantive provisions affecting social security cash benefits, the Supplemental Security Income program, social services, child welfare services, child support, Aid to Families with Dependent Children, Medicare and Medicaid. The Committee bill also establishes a new tax credit for low-income workers with children and, to pay the cost of the tax credit, deletes the income tax itemized deduction for State and local gasoline taxes. A summary of the Committee amendments follows." (Senate Report, p. 1.)

The "Summary" states, as to "Child Support":

> "CHILD SUPPORT
>
> Present law requires that the State welfare agency establish a single, identified unit whose purpose is to secure support for children who have been deserted or abandoned by their parents, utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support. If it is necessary to

establish paternity to find an obligation to support, this unit is supposed to carry out this activity. The State welfare agency is further required to enter into cooperative arrangements with the courts and with law enforcement officials to carry out this program. Access is authorized to both Social Security and (if there is a court order) to Internal Revenue Service records in locating deserting parents. The administration of the provisions of present law has varied widely among the States.

The Committee bill includes a number of features designed to assure an effective program of child support. The Committee bill leaves basic responsibility for child support and establishment of paternity to the State but it envisions a far more active role on the part of the Federal Government in monitoring and evaluating State programs, in providing technical assistance, and, in certain instances, in undertaking to give direct assistance to the States in locating absent parents and obtaining support payments from them.

States would be required to have effective programs for the collection of support and the establishment of paternity; Federal matching for these efforts would be increased from the present 50 percent to 75 percent but States not complying with the requirements would face a penalty in the form of reduced Federal matching funds for Aid to Families with Dependent Children.

Access to support collection services would be available to families not on welfare as well as to those on welfare." (Report, pp. 6, 7.)

The "minor, clerical and conforming changes in the Social Security Act" were accomplished through passage of H. R. 11333 on December 31, 1973 (Public Law 93-233). H. R. 3153, however, is believed to remain in conference.*

* The provisions of H.R. 3153 relating to "Child support and establishment of paternity" are to be found in section 151 of H.R. 3153 commencing at page 90 of the bill. The proposed amendments to Part A of Title IV of the Social Security Act are to be found

(Footnote continued on following page)

The Senate Committee was obviously concerned with the fact that the 1950 NOLEO amendments (42 U.S.C. § 502(a) (11)) and the 1967 amendments (42 U.S.C. § 602(a) (17) (18) (21) and (22)) had proven to be ineffective. (See pages 41 and 48 of the Report). The Report states:

> "In view of the fact that most States have not implemented in a meaningful way the provisions of present law relating to the enforcement of child support and establishment of paternity, the Committee believes that new and stronger legislative action is required in this area which will create a mechanism to require compliance with the law. The major elements of this proposal have been adapted from those States which have been the most successful in establishing effective programs of child support and establishment of paternity.
>
> The Committee bill builds upon the provisions of existing law which are basically sound. It mandates more aggressive administration at both the Federal and local levels with various incentives for compliance and with penalties for noncompliance." (Report, p. 43.)

The Committee's comments with regard to "Establishing Paternity" show beyond doubt that New York Social Services Law § 101-a(2) (3) accomplishes precisely the purposes which the Senate intended to accomplish. The Report states:

> "The Committee is concerned at the extent to which the dependency on AFDC is a result of the increasing number of children on the rolls who were born out of wedlock and for whom parental support is not being provided because the identity of the father has not

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(Footnote continued from preceding page)
commencing at page 111 of the bill. These include proposed amendments to section 402 (42 U.S.C. section 602), insertion of a new subdivision (f) in section 406 (42 U.S.C. section 606), and the proposed repeal of section 402(a) (17) (18) (21) and (22) (42 U.S.C. section 602(a) (17) (18) (21) and (22)), as well as section 410 (42 U.S.C. section 610) of the Act.

been determined. The Committee believes that an AFDC child has a right to have its paternity ascertained in a fair and efficient manner unless identification of the father is clearly against the best interests of the child. Although this may in some cases conflict with what a social worker considers the mother's short-term interests, the Committee feels that the child's right to support, inheritance, and to know who his father is deserves the higher social priority. In 1967, Congress enacted legislation requiring the States to establish programs to determine the paternity of AFDC children born out of wedlock so that support could be sought. The effectiveness of this provision was greatly curtailed both by * * * *and also by early court interpretations of Federal law which prevented State welfare agencies from requiring that a mother cooperate in identifying the father of a child born out of wedlock.* Later court decisions, however, have made it clear that such aid could be denied to a noncooperating mother." (Emphasis supplied.)* (Report, p. 48.)

Finally, see Senate Report No. 92-1230, dated September 25, 1972, to accompany H.R. 1, at pp. 467 and 468 where the Senate Finance Committee stated:

"COOPERATION OF MOTHER IN IDENTIFYING THE FATHER AND SEEKING SUPPORT PAYMENTS

Present law.—The Congress has written into the Social Security Act a provision requiring the State welfare agency 'in the case of a child born out of wedlock who is receiving Aid to Families with Dependent Children, to establish the paternity of such child.'

Court action.—Despite this clear legislative history, a U.S. district court in August 1969 (*Doe* v. *Shapiro*, 302 F Supp. 761), ruled that a mother's refusal to name the father of her illegitimate child could not result in denial of Aid to Families with Dependent

* See *Saiz* v. *Goodwin*, 325 F.Supp. 23 (D.N.Mex., March 5, 1971), vacated and remanded 450 F.2d 788 (10 Cir., November 9, 1971), decision after remand (sub. nom. *Saiz* v. *Hernandez*) 340 F.Supp. 165 (D.N.Mex., March 16, 1972).

Children. The applicable State regulation was held to be inconsistent with the provision in Federal law that AFDC be 'promptly furnished to all eligible individuals,' on the grounds that the State regulation imposed an additional condition of eligibility not required by Federal law.

The dissenting opinion stated:

> Unless the principle of personal parental responsibility is to be abandoned, as an obsolete cornerstone for gauging welfare eligibility, a full disclosure is a necessary and implied governmental prerogative, which requires the applicant to disclose all relevant information. Absent this personal responsibility and cooperativeness between the applicant-mother and the government, the effectiveness of the program would be seriously challenged because she is the sole source of this information; and without it the system designed to establish paternity could not function. • • •
>
> Congress created this system which required only the identity of the father to allow enforcement officials with the assistance of the Internal Revenue Service and the social security files, to locate an absconding father. It is one of the very few occasions when the information in those records is statutorily made available for use outside the agencies' official business. Could it be that Congress contemplated this elaborate system would be paralyzed by an uncooperative applicant-mother who could still successfully insist that she be paid her full monetary allotment?

Committee provision.—The committee's answer to this question is an emphatic 'No!' The provisions of the committee bill related to child support and establishing paternity are described in greater detail in chapter X of this report (see 501 ff.), but it is appropriate to note here that the committee bill would require, as a condition of eligibility, that a mother cooperate in efforts to establish the paternity of a child born out of wedlock, cooperate in seeking support payments from the father, and assign the right to collect support payments on her behalf to the Government."

CONCLUSION

The Order Appealed from should be reversed and New York Social Services Law § 101-a(2)(3) should be declared valid and constitutional in all respects.

Dated: November 25, 1974.

Respectfully submitted,

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